

ARTICLE 1

GENERAL PROVISIONS

***Summary:** This Article provides an introduction to the structure and the legal framework of the Unified Development Ordinance (the “UDO”). The UDO combines the zoning and subdivision authority of the City into one document. This Section recites applicable statutory authority, the applicability of the UDO to various uses and geographic areas of the City and its incorporated areas, consistency with the Area Plans (the Comprehensive Plan), coordination with other regulations, the effective date, violations, and related matters.*

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1.1. GENERAL PROVISION.

1.1.1. TITLE.

1.1.1.1. This Ordinance shall be known and may be cited as the Unified Development Ordinance (hereinafter "the Ordinance"). This Ordinance may also be known and may be referred to as the "UDO."

1.1.2. PURPOSE.

1.1.2.1. The Ordinance enables the City to respond uniformly and consistently to development proposals and to promote the health, safety, and general welfare of residents. The City is also working towards unified development goals that promote the welfare of the entire region, while providing uniformity, certainty, and predictability for persons subject to this Ordinance. This Ordinance also attempts to provide flexibility in dealing with situations that may fall outside typical processes and requirements. The elements that make up the Ordinance are interrelated and cannot be taken in isolation; they must be taken within the context and intent of the entire Ordinance. Specifically, the purposes of this Ordinance are described in subsections 1.3 through 1.4 of this Section.

1.1.3. ZONING REGULATIONS.

1.1.3.1. Zoning regulations are included in Articles 4-5 and 7-13. Pursuant to NCGS § 160D-701 et seq., the power of zoning is exercised in order to implement the *Comprehensive Plan*, and to:

- to lessen congestion in the streets;
- to secure safety from fire, panic, and other dangers;
- to promote health and the general welfare;
- to provide adequate light and air;
- to prevent the overcrowding of land;
- to avoid undue concentration of population;
- to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements;
- to protect and/or to enhance the character of each zoning district and its peculiar suitability for particular uses;
- to conserve the value of buildings; and
- to encourage the most appropriate use of land throughout the planning areas.

1.1.4. SUBDIVISION REGULATIONS.

1.1.4.1. Subdivision regulations are included in Article 6. Pursuant to NCGS § 160D-801 et seq., the power of subdivision control is exercised in order to:

- implement the *Comprehensive Plan* for the City;
- provide for the orderly growth and development of the City and for the efficient use of our resources (land, water, roads, etc.);
- provide for the coordination of transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities;
- provide for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision or, alternatively, for provision of funds to be used to acquire recreation areas serving residents of the neighborhood and/or for residents within the immediate area,
- provide for the dedication or reservation of and rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to NCGS §§ 136-66.10 or G.S. 136-66.11;
- provide for the distribution of population and traffic in a manner that will avoid congestion and overcrowding
- provide for the distribution of population and traffic that will substantially promote public health, safety, and the general welfare;
- provide that sufficient data is presented accurately by subdividers to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines;
- provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with municipal or county policies and standards and, to assure compliance with these requirements, by requiring the posting of bonds or any other method that will offer guarantee of compliance;

- provide for the reservation of school sites in accordance with comprehensive land use plans approved by the City and/or School Board(s).
- require the preparation and recording of a plat whenever any subdivision of land takes place;
- provide that a developer may offer funds for the City to acquire recreational land to serve the development or subdivision, including the purchase of land which may be used to serve more than one subdivision or development within the immediate area; and
- to provide that, in lieu of required street construction, a developer may be required to provide funds for the City to construct roads that serve the neighborhood and these funds may be used for roads which serve more than neighborhood within the area.

1.1.5. AUTHORITY.

1.1.5.1. The City is authorized by the North Carolina General Statutes ("NCGS") to exercise broad powers in the regulation of zoning, planning, subdivision of land, and building. The City through the UDO intends to use all powers provided by virtue of Chapter 160D of the NCGS. The UDO also uses specific powers granted in other Sections of the NCGS relating to particular types of development or particular development issues, including but not limited to right-of-way preservation, sedimentation control, watershed protection, historic preservation, and beautification and urban design.

1.1.5.2 The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

1.1.6. APPLICABILITY.

1.1.6.1. The Ordinance shall apply to all public buildings and private land(s), and use(s) thereon over which the City has jurisdiction under the constitution(s) and law(s) of the State of North Carolina and of the United States, including any areas within the jurisdiction of the City pursuant to NCGS § 160D-200 et seq.. Pursuant to NCGS § 160D-913, each provision of this UDO is applicable to the erection, construction, and use of buildings by the State of North Carolina and its political

subdivisions. The Planning Department (hereinafter known as the "Department") of the City can be contacted for further information about the use of this Ordinance.

1.1.6.2. The Official Zoning Map of the City of Kannapolis, North Carolina and all notations, references, and other information shown on the map are hereby incorporated and made a part of this Ordinance.

1.1.7. BUILDING AND LAND USE.

1.1.7.1. The use of buildings and land within the City shall be subject to all other regulations as well as this Ordinance, whether or not such other provisions are specifically referenced in this Ordinance. References to other regulations or provisions of the Ordinance are for the convenience of the reader; lack of a cross reference should not be construed as an indication that other regulations do not apply.

1.1.8. PERMITS AND CERTIFICATES.

1.1.8.1. No development activity shall occur on any property within the jurisdiction of this Ordinance until all applicable permits, approvals and certificates have been issued and approved by the appropriate officials.

1.1.9. FEES.

1.1.9.1. The City Council may establish any administrative fees necessary to enforce of the zoning ordinance. Such fees shall be limited to the reasonable costs of administering and processing applications for development approval. No permit shall be processed, and no permit shall be considered to be submitted, until all applicable administrative fees have been paid.

1.1.10. SEVERABILITY.

1.1.10.1. It is hereby declared to be the intent of the City Council that the provisions of this Ordinance shall be severable. If any provision is declared invalid by a court of competent jurisdiction, it is hereby declared to be the legislative intent that the effect of such decision shall be limited to that provision or provisions which are expressly stated in the decision to be invalid; and such decision shall not affect, impair or nullify this Ordinance as a whole or any other part thereof, but the rest of the Ordinance shall continue in full force and effect.

1.2. EXEMPTIONS AND SPECIAL CONSIDERATIONS.

1.2.1. PUBLIC LANDS AND PUBLIC ENTERPRISES.

ceases to be used for bona fide farm purposes becomes subject to the requirements of this Ordinance.

1.2.1.1. Pursuant to NCGS § 160D-913, no land owned by the State of North Carolina may be included within an overlay district or a conditional zoning district without approval of the Council of State.

1.2.2. VESTED RIGHTS.

1.2.2.1. The provisions of this UDO shall not apply to:

- a validly approved statutory vested right (including currently effective site-specific vesting plan or preliminary plat approved pursuant to NCGS § 160D-108.1 prior to the effective date of this Ordinance provided); or
- a judicial established common law vested right where (1) the owner has made substantial expenditures; (2) the expenditures were made in good faith; (3) the expenditures were made in reliance on valid government approval, if such was required; and (4) the owner would be harmed with a vested right. [ref. *Browning-Ferris Indus. of S. Atl., Inc. v. Guilford County Bd. of Adjustment*, 126 N.C. App. 168, 171-72, 484 S.E. 2d 411, 414 (1997)]

1.2.3. PERMIT CHOICE

In cases where this Ordinance is amended (i) between the time a development permit application is submitted and a decision on the application is made, or (ii) after a development permit decision has been challenged and found to be wrongfully denied or illegal, the applicant may choose whether the review of and decision on the application will proceed under the requirements of this Ordinance as it was in effect at the time the application was submitted, or under the requirements of this Ordinance as amended, in accordance with NCGS §§ 160D-108 and 143-755 and § 3.1 of this Ordinance.

1.2.4. BONA FIDE FARMS IN EXTRA-TERRITORIAL JURISDICTION

Property on which bona fide farms (as defined in NCGS § 160D-903) are currently operating within the City's extraterritorial jurisdiction are exempt from the requirements of this Ordinance to the minimum extent required by NCGS § 160D-903(c). Property that

1.3. CONSISTENCY WITH COMPREHENSIVE PLAN.

1.3.1. GENERALLY.

Pursuant to NCGS § 160D-701, this Ordinance is intended to implement the goals, objectives, and policies of the *Comprehensive Plan*. Any amendments to, or actions pursuant to the Ordinance shall be consistent with the applicable *Comprehensive Plan*. The *Comprehensive Plan* may be amended, and the UDO will reflect those amendments.

1.3.2. COMPREHENSIVE PLAN DEFINED.

The Comprehensive Plan shall be that as defined in Appendix A of this Ordinance.

1.3.3. AMENDMENTS TO TEXT.

Any amendment to the UDO must conform to the goals of the Comprehensive Plan. Any amendment to the zoning map must be consistent with the future land use map contained in the Comprehensive Plan and/or the purpose statement for the zoning district.

1.4. INTERPRETATION OF THE PROVISIONS OF THIS ORDINANCE.

1.4.1. INTERPRETATION AND APPLICATION OF PROVISIONS.

The provisions of this Ordinance are the basic and minimum requirements for the protection of public health, safety, and welfare. As provided by NCGS §160A-4 and §160D-110, this Ordinance shall be liberally interpreted in order to further its underlying purposes. In all cases, the highest standards will be applied. The meaning of any and all words, terms or phrases in this Ordinance may be found in Appendix A.

1.4.2. TEXT CONTROLS OVER GRAPHICS.

This Ordinance contains numerous graphics, pictures, illustrations, and drawings. However, text of this Ordinance shall control unless otherwise provided in the specific section.

1.5. EFFECTIVE DATE.

1.5.1. SCOPE.

This Ordinance shall become enforceable and shall take effect when it is codified, filed, and indexed in accordance with NCGS §§ 160A-77 or 160A-78. (Source: NCGS § 160 A-79(d). Unless clearly subordinated to another ordinance, regulation, resolution, or express policy, this Zoning Ordinance shall, on the effective date, prevail over any such conflicting or inconsistent ordinance, regulation, resolution, or express policy to the extent necessary to give this Zoning Ordinance full force and effect. The prior City of Kannapolis Zoning Ordinance and Subdivision Ordinance are hereby repealed except to the extent whereby continuing activities or violations regulated by previous ordinances are being administered. As set forth in § 1.2.2.1, the provisions of this UDO shall not apply to a validly approved and currently effective site-specific vesting plan.

1.6. VIOLATIONS OF THIS ORDINANCE.

1.6.1. APPLICABILITY.

1.6.1.1. Unless otherwise specified in other sections of this Ordinance, this Section shall set forth penalties and remedies for violations of this Ordinance.

1.6.1.2. Appeal. An appeal of a violation or decision of the Administrator, shall be to the Board of Adjustments in accordance with § 2.2.2.1 of this Ordinance.

1.6.2. TYPES OF VIOLATIONS.

Any of the following shall be a violation of this Ordinance and shall be subject to the remedies and penalties provided for in this Ordinance:

1.6.2.1. To place any use, structure, or sign upon land that is subject to this Ordinance without all of the approvals required by this Ordinance.

1.6.2.2. It is a Class I misdemeanor to subdivide land in violation of this Ordinance or transfer or sell land by reference to, exhibition of, or any other use of an unapproved plat. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from this penalty. The City may bring an action for injunction of:

- Any illegal subdivision
- Transfer of land
- Conveyance of land
- Sale of land

1.6.2.3. To erect, construct, reconstruct, remodel, alter, maintain, move, or use any building, structure or sign, or to engage in development or subdivision of any land in contravention of any zoning, subdivision, sign or other regulation of this Ordinance. This section is not intended to address legal nonconforming uses or structures. Article 13 of this Ordinance shall regulate expansions or other alterations to legal nonconforming uses or structures.

1.6.2.4. To engage in any subdividing, development, construction, remodeling or other activity of any nature upon land that is subject to this Ordinance without all of the approvals required by this Ordinance.

1.6.2.5. To engage in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with the terms and conditions of any permit, approval, certificate, or other form of authorization required in order to engage in such activity.

1.6.2.6. To violate, by act or omission, any term, condition, or qualification placed by a decision-making body upon any permit or other form of authorization.

1.6.2.7. To reduce or diminish any lot area so that the setbacks or open spaces shall be smaller than prescribed by this Ordinance.

1.6.2.8. To increase the intensity of use of any land or structure, except in accordance with the procedural requirements and substantive standards of this Ordinance.

1.6.2.9. To remove, deface, obscure, or otherwise interfere with any notice required by this Ordinance.

1.6.2.10. To fail to remove any sign or other improvement installed, created, erected, or maintained in violation of this Ordinance, or for which the permit, approval, permission, or other authorization has lapsed. This section is not intended to address legal nonconforming uses or structures. Article 13 of this Ordinance shall regulate expansions or other alterations to legal nonconforming uses or structures.

1.6.2.11. To otherwise undertake any development or to establish any use in a manner which does not comply with this Ordinance.

1.6.3. CONTINUING VIOLATIONS.

1.6.3.1. Each day that a violation remains uncorrected after receiving proper notice shall constitute a separate violation of this Ordinance.

1.6.3.2. Any violation of the zoning, subdivision, flood prevention, sedimentation, and erosion control ordinances in effect prior to the adoption of this Ordinance shall continue to be a violation under this Ordinance, and is subject to penalties and enforcement under § 1.6 this Ordinance, unless the use, development, construction, or other activity

complies with the provisions of this Ordinance.

1.6.3.3. Nothing in this Ordinance shall prohibit the continuation of previous enforcement actions, undertaken by the City pursuant to previous and valid ordinances and laws.

1.6.4. CIVIL REMEDIES AND ENFORCEMENT POWERS.

Failure to comply with any provision of this Ordinance is hereby declared unlawful. The following remedies and enforcement powers may be used to administer and enforce this Ordinance:

1.6.4.1. Withhold Permit. The administrator may withhold all permits or approvals if there is:

- a repeat violation of this Ordinance as set forth in § 1.6.5.2; or
- there is a condition or qualification of approval granted by the Planning and Zoning Commission or the City Council that has not been met.

The Administrator may deny or withhold all permits, certificates, or other forms of authorization on any land or structure or improvements owned or being developed by a person who owns, developed, or otherwise caused an uncorrected repeat violation of this Ordinance. This provision shall apply whether or not the property for which the permit or other approval is sought is the property in violation.

1.6.4.2. Revoke Plan, Permit, or Other Approval. Any Development Permit or other form of authorization required under this Ordinance may be revoked for any reason set forth in § 1.6.1 and in NCGS § 160D-403(f). Any plan approval may be revoked for failure to comply with approved plans or conditions. The revocation shall be processed in accordance with § 3.1.11 of this Ordinance.

1.6.4.3. Stop Work. With or without revoking permits, the Administrator may stop work on any land or structure on any land on which there is an uncorrected violation of a provision of this Ordinance or of a permit or other form of authorization issued hereunder, in accordance with the power to stop work pursuant to NCGS § 160D-404(b). The stop order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons therefor, and the conditions under which the work may be resumed. A copy of the stop order shall be delivered via personal delivery, electronic mail, or

First-Class Mail to the holder of the permit and the owner of the property (if the owner is not the holder of the permit). The person providing the notice shall certify to the City that the notice was provided, and the certification shall be deemed conclusive in the absence of fraud.

1.6.4.4. Injunction and Abatement. This UDO may be enforced by any means or any remedy provided for in NCGS 160D-404(c). An action for injunction of any illegal subdivision, transfer, conveyance, or sale of land may be prosecuted by the Administrator or his designee pursuant to NCGS § 160D-807.

1.6.4.5. Other Remedies. The Administrator, City Council, Planning and Zoning Commission and the Board of Adjustment shall have such other remedies as are, and as may be from time to time, provided by North Carolina law for the violation of zoning, subdivision, sign or related Ordinance provisions.

1.6.5. PENALTIES FOR VIOLATION.

1.6.5.1. First Offense. Any violation occurring once within a 36-month period shall be considered a first offense. A notice of violation shall be issued by the Administrator or his/her designee to the violator. Such notice shall set out the nature of the violation, the section violated, and the date of the violation. The notice of violation shall provide for a reasonable period of time by which the violation must be abated or otherwise brought into compliance with this Ordinance. The notice shall specify that a second citation shall incur a civil penalty, together with costs and attorney fees. An appeal of the Administrator's decision shall be allowed as prescribed under § 1.6.1.2. Upon the expiration of the deadline stated in the notice of violation, the violator shall be subject to a civil penalty of \$100.00 for each day that the violation remains on the property without further notice. Should a violation continue to exist ⁽¹⁾and/or the violator fails to pay the penalties, the City shall seek to recover the penalty together with all costs by filing a civil action in the General Court of Justice in the nature of a suit to collect a debt. The collection of a penalty pursuant hereto shall not foreclose further proceedings for penalties coming due subsequent to the date of the filing of a prior proceeding. The provisions of this section may also

be enforced through any other appropriate remedies as prescribed in § 1.6.4.

1.6.5.2. Repeat Offense. Any violation of reoccurring on the same property by the same violator more than once within a 36-month period shall be considered a repeat offense provided the reoccurrence is a violation of the same Article of this Ordinance. A notice of violation shall be issued by the Administrator or his/her designee and shall have an immediate civil penalty of \$300.00. No warning period shall be granted since this provision applies only to violations that occur more than once in a 36-month period and proper notice was given for the initial violation as prescribed under § 1.6.5.1. For each day the repeat violation remains, the violator shall be subject to a civil penalty of \$300.00. Should a violation continue to exist ⁽¹⁾and/or the violator fails to pay the penalties, the City shall seek to recover the penalty together with all costs by filing a civil action in the General Court of Justice in the nature of a suit to collect a debt. Procedures for issuance, service, and collection of non-paid penalties shall be as set forth in Section 1-14 of the City of Kannapolis Code of Ordinances. The collection of a penalty pursuant hereto shall not foreclose further proceedings for penalties coming due subsequent to the date of the filing of a prior proceeding. The provisions of this section may also be enforced through any other appropriate remedies as prescribed in § 1.6.4.

1.6.6. OTHER POWERS.

In addition to the enforcement powers specified in this Section, the City Council may exercise any and all enforcement powers granted by North Carolina law.

1.6.7. REMEDIES CUMULATIVE.

The remedies and enforcement powers established in this Article shall be cumulative, and the City may exercise them in any order.

1.6.8. ENFORCEMENT PROCEDURES.

1.6.8.1. Non-Emergency Matters. In the case of violations of this Ordinance that do not constitute an emergency or require immediate attention, the Administrator shall give notice of the nature of the violation to the property owner and any applicant for any relevant permit or holder of any relevant permit in the manner hereafter stated as prescribed in § 1.6.5.1 and 1.6.5.2. Notice shall be given in person, by First Class Mail, or electronic mail. Notice may

also be posted on the property. The person providing the notice shall certify to the City that the notice was provided, and the certification shall be deemed conclusive in the absence of fraud. Notices of violation shall state the nature of the violation and the time period for compliance and may state the corrective steps necessary and the nature of subsequent penalties and enforcement actions should the situation not be corrected.

1.6.8.2. Emergency Matters. In the case of violations of this Ordinance that constitute an emergency situation resulting in an immediate threat to the health, or safety of the public, or violations that will create increased problems or costs to the public for the provision of City services if not remedied immediately, the Administrator may use the enforcement powers available under this Article without prior notice, but the Administrator shall attempt to give notice simultaneously with beginning enforcement action. Notice may be provided to the property owner, to any other person who can be contacted and has an identifiable relationship to the violation and/or owner.